

REMARKS

Interview request

Applicants respectfully request a telephonic interview after the Examiner has reviewed the instant response and amendment. Applicants request the Examiner call Applicants' representative, as noted below.

Status of the Claims*Pending claims*

Claims 1, 46, 53, 56 to 58, 61, 64, 66, 68, 70, 73, 107, 125, 126, 130, 131, 133, 135, 137, 138, 140, 157, 161, 169, 171, 218, 221, 225, 229, 231 to 234, 236, 241, 262, 265, 269 and 271 to 273, are pending.

Claims canceled

In the instant preliminary amendment, claims 53, 262, 265 and 269, are canceled, without prejudice or disclaimer. According, after entry of this amendment, claims 1, 46, 56 to 58, 61, 64, 66, 68, 70, 73, 125, 126, 130, 131, 133, 135, 137, 138, 140, 157, 161, 169, 171, 218, 221, 225, 229, 231 to 234, 236, 241 and 271 to 273, are pending.

Support for the claim amendments

The specification sets forth an extensive description of the invention in the amended claims. For example, support for the amended claims can be found throughout the specification and in the claims as filed.

The Group Restriction Requirement

The Office alleged that the pending claims of the application are directed to twenty-two (I to XXII) separate and distinct inventions under 35 U.S.C. §121, as set forth on pages 2 to 5, of the OA.

The Group Election, with traverse

Applicants hereby elect Group I, drawn to, inter alia, polynucleotides, probes, vectors, host cells, methods of making and nucleic acid arrays, with traverse.

Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

The SEQ ID Species/Group Restriction Requirement

The Office also alleged that the pending claims are directed to distinct inventions based on the various disclosed biological sequences (SEQ ID NO:s), as set forth on pages 6 to 7, of the OA.

The SEQ ID Species/Group Election

Applicants hereby elect SEQ ID NO:7; noting that SEQ ID NO:8 is encoded e.g., by SEQ ID NO:7, with traverse.

Reasons to reconsider and withdraw the Group and the SEQ ID restriction requirement

Applicants respectfully request the Patent Office reconsider and withdraw the restriction requirement for the following reasons:

This application is a §371 national phase application

This application is a national phase application claiming benefit of priority under 35 U.S.C. §371 to Patent Convention Treaty (PCT) International Application Serial No: PCT/US2003/ 033150, filed October 15, 2003; published as WO 2004/042006, on May 21, 2004.

Because this application is a §371 national phase application restriction is evaluated under:

PCT RULE 13 Unity of Invention

PCT RULE 13.1. Requirement

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

PCT RULE 13.2.

Circumstances in Which the Requirement of Unity of Invention Is To Be Considered Fulfilled

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Further direction is provided in MPEP 1893.03(d) (MPEP Eighth Ed, Rev. 3, Aug. 2005, page 1800-200, 201):

MPEP 1893.03(d) Unity of Invention [R-2] - 1800 Patent Cooperation Treaty

A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. For example, a corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key.

Applicants respectfully aver that after entry of the instant amendment, all claims will be linked as to form a single general inventive concept, i.e., after entry of the instant amendment all claims will have the requisite "unity of invention".

Accordingly, in light of the instant amendment, Applicants respectfully request the Patent Office to rejoin all Groups and all claims pending after entry of the instant amendment, including claims from Groups II to XXII to the elected Group I.

Applicants respectfully aver that after entry of the instant amendment all pending claims in this application will satisfy PCT Rule 13.2 in that they will share the novel inventive concept based use of a genus of polypeptides as exemplified by SEQ ID NO:8, encoded e.g., by the genus of nucleic acids as exemplified by SEQ ID NO:7. Accordingly, in light of the instant amendment, all claims in Groups II to XXII can be properly added back to the elected Group I.

CONCLUSION

Applicants respectfully aver that after entry of the instant amendment all claims pending in this application will be in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. **564462003900**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

As noted above, Applicants have requested a telephone conference with the undersigned representative to expedite prosecution of this application. After the Examiner has reviewed the instant response and amendment, please telephone the undersigned at 858 720-5133.

Dated: April 25, 2008

Respectfully submitted,

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